



House of Representatives

General Assembly

File No. 372

January Session, 2005

Substitute House Bill No. 6772

House of Representatives, April 14, 2005

The Committee on Planning and Development reported through REP. WALLACE of the 109th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM CHANNEL ENCROACHMENT PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 25-68b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 As used in sections 25-68b to 25-68h, inclusive, as amended by this
4 act:

5 (1) "Activity" means any proposed state action in a floodplain or any
6 proposed state action that impacts natural or man-made storm
7 drainage facilities [, including, but not limited to, the following: (a)
8 Any structure, obstruction or encroachment proposed for
9 emplacement within the floodplain area; (b) any proposal for site
10 development which increases peak runoff rates; (c) any grant or loan
11 which affects land use, land use planning or the disposal of state
12 properties in floodplains, or (d) any program regulating flood flows

13 within the floodplain] that are located on property that the
14 commissioner determines to be controlled by the state;

15 (2) "Base flood" means that flood which has a one per cent chance of
16 being equaled or exceeded in any year, as defined in regulations of the
17 National Flood Insurance Program (44 CFR 59 et seq.) or that flood
18 designated by the commissioner pursuant to section 25-68c. Any flood
19 so designated by the commissioner shall have at least a one per cent
20 chance of being equaled or exceeded in any year. Such flood may be
21 designated as the A or V zones on maps published by the National
22 Flood Insurance Program. The "base flood for a critical activity" means
23 the flood that has at least a .2 per cent chance of being equaled or
24 exceeded in any year. Such flood may be designated as the B zone on
25 maps published for the National Flood Insurance Program;

26 (3) "Commissioner" means the Commissioner of Environmental
27 Protection;

28 (4) "Critical activity" means any activity, including, but not limited
29 to, the treatment, storage and disposal of hazardous waste and the
30 siting of hospitals, housing for the elderly, schools or residences, in the
31 .2 per cent floodplain in which the commissioner determines that a
32 slight chance of flooding is too great;

33 (5) "Floodplain" means that area located within the real or
34 theoretical limits of the base flood or base flood for a critical activity;

35 (6) "Flood-proofing" means any combination of structural or
36 nonstructural additions, changes or adjustments which reduce or
37 eliminate flood damage to real estate or improved real property, to
38 water and sanitary facilities, and to structures and their contents;

39 (7) "Freeboard" means a safety factor, expressed in feet above a
40 calculated flood level, that compensates for unknown factors
41 contributing to flood heights greater than the calculated height,
42 including, but not limited to, ice jams, debris accumulations, wave
43 actions, obstructions of bridge openings and floodways, the effects of

44 urbanization on the hydrology of a watershed, loss of flood storage
45 due to development and sedimentation of a watercourse bed;

46 (8) "Proposed state action" means individual activities or a sequence
47 of planned activities proposed to be undertaken by a state department,
48 institution or agency, any state or federal grant or loan proposed to be
49 used to fund a project that affects land use, or proposed transfer of real
50 property belonging to the state.

51 Sec. 2. Section 25-68c of the general statutes is repealed and the
52 following is substituted in lieu thereof (*Effective October 1, 2005*):

53 The commissioner shall have the following powers and duties
54 under sections 25-68b to 25-68h, inclusive, as amended by this act:

55 (1) To coordinate, monitor and analyze the floodplain management
56 activities of state and local agencies;

57 (2) To coordinate flood control projects within the state and be the
58 sole initiator of a flood control project with a federal agency;

59 (3) To act as the primary contact for federal funds for floodplain
60 management activities sponsored by the state;

61 (4) To regulate actions by state agencies affecting floodplains except
62 conversion by The University of Connecticut of commercial or office
63 structures to an educational structure;

64 (5) To regulate proposed state actions that impact natural or man-
65 made storm drainage facilities located on property that the
66 commissioner determines to be controlled by the state, including, but
67 not limited to, programs that regulate flood flows within a floodplain
68 and site development that increases peak runoff rates;

69 [(5)] (6) To designate a repository for all flood data within the state;

70 [(6)] (7) To assist municipalities and state agencies in the
71 development of comprehensive floodplain management programs;

72 [(7)] (8) To determine the number and location of state-owned
73 structures and uses by the state in the floodplain and to identify
74 measures to make such structures and uses less susceptible to flooding
75 including flood-proofing or relocation;

76 [(8)] (9) To mark or post the floodplains within lands owned, leased
77 or regulated by state agencies in order to delineate past and probable
78 flood heights and to enhance public awareness of flood hazards;

79 [(9)] (10) To designate the base flood or base flood for a critical
80 activity where no such base flood is designated by the National Flood
81 Insurance Program. The commissioner may add a freeboard factor to
82 any such designation;

83 [(10)] (11) To require that any flood control project be designed to
84 provide protection equal to or greater than the base flood.

85 Sec. 3. Section 25-68d of the general statutes is repealed and the
86 following is substituted in lieu thereof (*Effective October 1, 2005*):

87 (a) No state agency shall undertake an activity or a critical activity
88 within or affecting the floodplain without first obtaining an approval
89 or approval with conditions from the commissioner of a certification
90 submitted in accordance with subsection (b) of this section or
91 exemption by the commissioner from such approval or approval with
92 conditions in accordance with subsection (d) of this section.

93 (b) Any state agency proposing an activity or critical activity within
94 or affecting the floodplain shall submit to the commissioner
95 information certifying that:

96 (1) The proposal will not obstruct flood flows or result in an adverse
97 increase in flood elevations, significantly affect the storage or flood
98 control value of the floodplains, cause an adverse increase in flood
99 velocities, or an adverse flooding impact upon upstream, downstream
100 or abutting properties, or pose a hazard to human life, health or
101 property in the event of a base flood or base flood for a critical activity;

102 (2) The proposal complies with the provisions of the National Flood
103 Insurance Program (44 CFR 59 et seq.), and any floodplain zoning
104 requirements adopted by a municipality in the area of the proposal
105 and the requirements for stream channel encroachment lines adopted
106 pursuant to the provisions of section 22a-342;

107 (3) The agency has acquired, through public or private purchase or
108 conveyance, easements and property in floodplains when the base
109 flood or base flood for a critical activity is elevated above the
110 increment authorized by the National Flood Insurance Program or the
111 flood storage loss would cause adverse increases in such base flood
112 flows;

113 (4) The proposal promotes long-term nonintensive floodplain uses
114 and has utilities located to discourage floodplain development;

115 (5) The agency has considered and will use to the extent feasible
116 flood-proofing techniques to protect new and existing structures and
117 utility lines, will construct dikes, dams, channel alterations, seawalls,
118 breakwaters or other structures only where there are no practical
119 alternatives and will implement stormwater management practices in
120 accordance with regulations adopted pursuant to section 25-68h; and

121 (6) The agency has flood forecasting and warning capabilities
122 consistent with the system maintained by the National Weather
123 Service and has a flood preparedness plan.

124 (c) The commissioner shall make a decision either approving,
125 approving with conditions or rejecting a certification [within] not later
126 than ninety days [of] after receipt of such certification, except that in
127 the case of an exemption any decision shall be made [within] ninety
128 days [of] after the close of the hearing. If a certification is rejected, the
129 agency shall be entitled to a hearing in accordance with the provisions
130 of sections 4-176e, 4-177, 4-177c and 4-180.

131 (d) Any state agency proposing an activity or critical activity within
132 or affecting the floodplain may apply to the commissioner for

133 exemption from the provisions of subsection (b) of this section. Such
134 application shall include a statement of the reasons why such agency is
135 unable to comply with said subsection and any other information the
136 commissioner deems necessary. The commissioner, [after public notice
137 of the application and an opportunity for a public hearing in
138 accordance with the provisions of chapter 54,] at least thirty days
139 before approving, approving with conditions or denying any such
140 application, shall publish once in a newspaper having a substantial
141 circulation in the affected area notice of: (1) The name of the applicant;
142 (2) the location and nature of the requested exemption; (3) the tentative
143 decision on the application; and (4) additional information the
144 commissioner deems necessary to support the decision to approve,
145 approve with conditions or deny the application. There shall be a
146 comment period following the public notice during which period
147 interested persons and municipalities may submit written comments.
148 After the comment period, the commissioner shall make a final
149 determination to either approve the application, approve the
150 application with conditions or deny the application. The commissioner
151 may hold a public hearing prior to approving, approving with
152 conditions or denying any application if in the discretion of the
153 commissioner the public interest will be best served thereby, and the
154 commissioner shall hold a public hearing upon receipt of a petition
155 signed by at least twenty-five persons. Notice of such hearing shall be
156 published at least thirty days before the hearing in a newspaper
157 having a substantial circulation in the area affected. The commissioner
158 may approve or approve with conditions such exemption if [he] the
159 commissioner determines that [(1)] (A) the agency has shown that the
160 activity or critical activity is in the public interest, will not injure
161 persons or damage property in the area of such activity or critical
162 activity, complies with the provisions of the National Flood Insurance
163 Program, and, in the case of a loan or grant, the recipient of the loan or
164 grant has been informed that increased flood insurance premiums may
165 result from the activity or critical activity, or [(2)] (B) in the case of a
166 flood control project, such project meets the criteria of [subdivision (1)]
167 subparagraph (A) of this subdivision and is more cost-effective to the

168 state and municipalities than a project constructed to or above the base
169 flood or base flood for a critical activity. Following approval for
170 exemption for a flood control project, the commissioner shall provide
171 notice of the hazards of a flood greater than the capacity of the project
172 design to each member of the legislature whose district will be affected
173 by the project and to the following agencies and officials in the area to
174 be protected by the project: The planning and zoning commission, the
175 inland wetlands agency, the director of civil defense, the conservation
176 commission, the fire department, the police department, the chief
177 elected official and each member of the legislative body, and the
178 regional planning agency. Notice shall be given to the general public
179 by publication in a newspaper of general circulation in each
180 municipality in the area in which the project is to be located.

181 (e) The failure of any agency to comply with the provisions of this
182 section or any regulations adopted pursuant to section 25-68c, as
183 amended by this act, shall be grounds for revocation of the approval of
184 the certification.

185 (f) The provisions of this section shall not apply to any proposal by
186 the department of transportation for a project within a drainage basin
187 of less than one square mile.

188 Sec. 4. Section 22a-349 of the general statutes is repealed and the
189 following is substituted in lieu thereof (*Effective October 1, 2005*):

190 (a) The provisions of sections 22a-342 to 22a-348, inclusive, shall not
191 be deemed to restrict agricultural or farming uses of lands located
192 within the stream channel encroachment lines including the building
193 of fences, provided this section shall not apply to farm buildings and
194 farm structures.

195 (b) The following operations and uses shall be permitted within
196 stream channel encroachment lines, as of right: (1) Lawns, gardens or
197 vegetative plantings, (2) split rail fences, (3) open decks attached to
198 residential structures, properly anchored in accordance with the State
199 Building Code, (4) construction of minor structures to an existing

200 facility for the purpose of providing handicap accessibility pursuant to
201 the State Building Code, (5) temporary greenhouses or hoopouses
202 constructed without permanent foundations and anchored pursuant to
203 the State Building Code, (6) placement of fish habitat enhancement
204 devices performed by or approved by the Commissioner of
205 Environmental Protection, (7) demolition of an existing structure, (8)
206 backfilling of foundations, (9) flood-proofing of existing structures,
207 including, but not limited to, elevating structures in accordance with
208 Federal Emergency Management Agency standards, (10) repair or
209 installation of septic systems, (11) construction of irrigation systems,
210 (12) installation of water monitoring structures performed by or
211 approved by the Commissioner of Environmental Protection, (13)
212 installation of dry hydrants, (14) driveway and roadway repair and
213 maintenance that does not raise the existing road grade more than
214 three inches, or (15) patios or walkways constructed at grade.

215 Sec. 5. Section 22a-349a of the general statutes is repealed and the
216 following is substituted in lieu thereof (*Effective October 1, 2005*):

217 (a) The Commissioner of Environmental Protection may issue a
218 permit for any minor activity regulated under sections 22a-342 to 22a-
219 349, inclusive, as amended by this act, except for any activity covered
220 by an individual permit, if the commissioner determines that such
221 activity would cause minimal environmental effects when conducted
222 separately and would cause only minimal cumulative environmental
223 effects, and will not cause any increase in flood heights or in the
224 potential for flood damage or flood hazards. Such activities may
225 include routine minor maintenance and routine minor repair of
226 existing structures; replacement of existing culverts; installation of
227 water monitoring equipment, including but not limited to staff gauges,
228 water recording and water quality testing devices; removal of
229 unauthorized solid waste; extension of existing culverts and
230 stormwater outfall pipes; [placement of greenhouses or hoopouses
231 lacking concrete foundations;] construction of irrigation and utility
232 lines; and safety improvements with minimal environmental impacts
233 within existing rights-of-way of existing roadways. Any person, firm

234 or corporation conducting an activity for which a general permit has
235 been issued shall not be required to obtain an individual permit under
236 any other provision of said sections 22a-342 to 22a-349, inclusive, as
237 amended by this act, except as provided in subsection (c) of this
238 section. A general permit shall clearly define the activity covered
239 thereby and may include such conditions and requirements as the
240 commissioner deems appropriate, including but not limited to,
241 management practices and verification and reporting requirements.
242 The general permit may require any person, firm or corporation,
243 conducting any activity under the general permit to report, on a form
244 prescribed by the commissioner, such activity to the commissioner
245 before it shall be covered by the general permit. The commissioner
246 shall prepare, and shall annually amend, a list of holders of general
247 permits under this section, which list shall be made available to the
248 public.

249 (b) Notwithstanding any other procedures specified in said sections
250 22a-342 to 22a-349, inclusive, as amended by this act, any regulations
251 adopted thereunder, and chapter 54, the commissioner may issue,
252 revoke, suspend or modify a general permit in accordance with the
253 following procedures: (1) The commissioner shall publish in a
254 newspaper having a substantial circulation in the affected area or areas
255 notice of intent to issue a general permit; (2) the commissioner shall
256 allow a comment period of thirty days following publication of such
257 notice during which interested persons may submit written comments
258 concerning the permit to the commissioner and the commissioner shall
259 hold a public hearing if, within said comment period, he receives a
260 petition signed by at least twenty-five persons; (3) the commissioner
261 may not issue the general permit until after the comment period; and
262 (4) the commissioner shall publish notice of any permit issued in a
263 newspaper having substantial circulation in the affected area or areas.
264 Any person may request that the commissioner issue, modify or
265 revoke a general permit in accordance with this subsection.

266 (c) Subsequent to the issuance of a general permit, the commissioner
267 may require any person, firm or corporation, to apply for an individual

268 permit under the provisions of said sections 22a-342 to 22a-349,
 269 inclusive, as amended by this act, for all or any portion of the activities
 270 covered by the general permit, if in the commissioner's judgment the
 271 purposes and policies of such sections would be best served by
 272 requiring an application for an individual permit. The commissioner
 273 may require an individual permit under this subsection only if the
 274 affected person, firm or corporation has been notified in writing that
 275 an individual permit is required. The notice shall include a brief
 276 statement of the reasons for the decision and a statement that upon the
 277 date of issuance of such notice the general permit as it applies to the
 278 individual activity will terminate.

279 (d) Any general permit issued under subsection (a) of this section
 280 [shall] may require that any person, firm or corporation intending to
 281 conduct an activity covered by such general permit [shall, at least sixty
 282 days before initiating such activity,] give written notice of such
 283 intention to the inland wetlands agency, zoning commission, planning
 284 commission or combined planning and zoning commission and
 285 conservation commission of any municipality which will or may be
 286 affected by such activity. [, and to the department which shall make
 287 such notices available to the public.] The general permit shall specify
 288 the information [which must] required to be contained in the notice.
 289 [An inland wetlands agency, planning and zoning commission,
 290 conservation commission or any person may submit written comments
 291 to the commissioner concerning such activity not later than twenty-five
 292 days prior to the date that the activity is proposed to begin.]

293 (e) The commissioner may adopt regulations in accordance with the
 294 provisions of chapter 54 to carry out the purposes of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	25-68b
Sec. 2	<i>October 1, 2005</i>	25-68c
Sec. 3	<i>October 1, 2005</i>	25-68d
Sec. 4	<i>October 1, 2005</i>	22a-349

Sec. 5	October 1, 2005	22a-349a
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Statement of Legislative Commissioners:

In section 4(b), the phrase "Uniform Construction Code and applicable local building codes" was replaced with "State Building Code" for accuracy.

ENV *Joint Favorable Subst. C/R* PD

PD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Department of Environmental Protection	EQ/GO Bonds - Savings	See Below	See Below

Municipal Impact: None

Explanation

Limiting the Department of Environmental Protection's (DEP) authority to review various activities in a floodplain area will eliminate approximately 50 engineering reviews of flood management projects per year. This results in an annual workload decrease equating to ½ to 1 engineer that will be utilized for other agency programs and projects.

The elimination of a public hearing requirement could minimally decrease costs to any impacted state agency.

OLR Bill Analysis*sHB 6772****AN ACT CONCERNING FLOOD MANAGEMENT AND THE STREAM CHANNEL ENCROACHMENT PROGRAM*****SUMMARY:**

This bill:

1. limits the Department of Environmental Protection's (DEP) power to review certain activities in a flood plain area to state actions on state controlled property,
2. eliminates a requirement for a public hearing in contested cases involving certain state agency activities proposed for a floodplain and makes such a hearing discretionary unless 25 people request it,
3. permits certain operations and uses as of right in a stream encroachment channel,
4. changes notification and comment requirements for applications for general permits to conduct minor activities within stream channel encroachment lines, and
5. requires an individual permit to build certain greenhouses and hoopouses within a stream encroachment channel.

EFFECTIVE DATE: October 1, 2005

ACTIVITIES IN A FLOOD PLAIN

Under current law, the DEP commissioner regulates, coordinates, monitors, and analyzes state actions in a floodplain or that impact any natural or man-made storm drainage facilities.

The bill instead limits her authority to regulating, coordinating, monitoring, and analyzing state actions and proposed actions on

floodplains and natural or man-made storm drainage facilities only on property she determines the state controls.

Under the bill, these actions include (1) an individual activity or sequence of activities proposed by a state department, institution, or agency; (2) any state or federal grant or loan proposed to fund a project that affects land use; or (3) a proposed transfer of state-owned real property.

ACTIVITIES WITHIN A FLOODPLAIN

Approval Process

By law, a state agency can begin an activity within or affecting a floodplain if it submits certain information to the commissioner and obtains her approval. The bill authorizes the commissioner to issue conditional, as well as unconditional approval of such applications. It also allows her to conditionally approve a state agency request for an exemption from the approval process if she makes certain findings.

Exemption Request

Under current law, a state agency may ask for an exemption from the approval process, and the commissioner must provide the opportunity for a public hearing on the request. The bill specifies the notice required before the commissioner may approve, approve with conditions, or deny an application for an exemption. At least 30 days before issuing such a decision, she must publish, at least once in a newspaper having a substantial circulation in the affected area, (1) the applicant's name, (2) the location and nature of the requested exemption, (3) her tentative decision, and (4) additional information she deems necessary.

The bill requires that a comment period follow the public notice, during which interested people and municipalities may submit written comments. It does not specify how long the period must last, but it apparently coincides with the 30-day period between publication of the notice and her decision. After the comment period, the commissioner must make a final decision approving the application, approving it with conditions, or denying it.

Under the bill, before making her final decision the commissioner may hold a public hearing if she believes it will best serve the public interest. But she must hold a hearing if 25 people petition for one. She must publish notice of the hearing in a newspaper with a substantial circulation in the affected area at least 30 days before it takes place.

STREAM CHANNEL ENCROACHMENT EXCEPTIONS

By law, the DEP commissioner must establish, along certain inland waterways or flood-prone areas, lines beyond which no one may place any encroachment or hindrance. The law exempts agricultural or farming uses of lands within the stream channel encroachment lines (but not farm buildings and structures).

The bill permits 15 other types of operations and uses as of right. These are:

1. lawns, gardens, or vegetative plantings;
2. split rail fences;
3. open decks attached to residential structures, properly anchored according to the State Building Code (code);
4. construction of minor structures to an existing facility to provide handicapped accessibility according to the code;
5. temporary greenhouses or hoopouses built without permanent foundations and anchored according to the code;
6. placement of fish habitat enhancement devices by, or approved by, the DEP commissioner;
7. demolition of existing structures;
8. backfilling of foundations;
9. flood-proofing existing structures, including elevating structures according to Federal Emergency Management Agency standards;
10. septic system repair or installation;

11. irrigation system construction;
12. installation of water monitoring structures by, or approved by, the DEP commissioner;
13. dry hydrant installation;
14. driveway and roadway repair and maintenance that does not raise the existing road grade more than three inches; and
15. patios or walkways constructed at grade.

GENERAL PERMITS FOR MINOR ACTIVITIES

By law, the commissioner may issue a general permit for certain minor activities in a stream channel if she makes certain findings. Under current law, applicants must send written notice to the DEP and certain local agencies and commissions at least 60 day before starting the activity covered by the permit. DEP must make this notice available to the public. Current law authorizes an inland wetlands agency, planning and zoning commission, conservation commission, or anyone else to submit written comments to the commissioner about the proposed activity at least 25 days before it is to begin.

Under the bill, any such permit may, but does not have to, require that the applicant give such written notice. It also eliminates (1) the 60-day deadline for such notice, (2) the need for the applicant to notify the DEP, and for the department to notify the public; and (3) the ability of an inland wetlands agency, planning and zoning commission, conservation commission, or anyone else to submit written comments to the commissioner.

Greenhouses or Hoophouses

The bill apparently requires people to obtain an individual permit to build permanent greenhouses and hoophouses lacking concrete foundations in stream encroachment channels. As already noted, the bill allows placement in stream encroachment channels as of right for temporary greenhouses or hoophouses built without permanent foundations.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference

Yea 26 Nay 0

Planning and Development Committee

Joint Favorable Substitute

Yea 18 Nay 0